

110-210-1111
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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220902

DATE: February 20, 1986

MATTER OF: Petchem Inc.

DIGEST:

Protest concerning NASA request for carriers' rate tenders for marine transportation services is dismissed since the request was issued under authority of the Transportation Act of 1940, as amended, 49 U.S.C. § 10721 (1982), and the agency did not obtain such services under the government's procurement system so that a government bill of lading will serve as the basis for payment.

Petchem Inc. (Petchem) protests the National Aeronautics and Space Administration's (NASA) selection of Dravo Mechling Corporation (Dravo) for transportation services of an ocean tugboat for the towing of a government-owned barge.

The protest is dismissed.

On September 9, 1985, the NASA transportation office at the Marshall Space Flight Center, requested "a uniform tender of rates and/or charges" for the furnishing of an ocean towboat and equipment, as well as services and personnel not furnished by the government, necessary to tow a government-owned barge between Michoud Harbor, New Orleans, Louisiana, and the Kennedy Space Center in Florida. The barge in question is used to transport external main engine fuel tanks for the space shuttle from the place of manufacture to the Kennedy Space Center. The request for rates and/or charges advised that these uniform tenders of rates would be for the delivery of the next 10 external tanks to the Kennedy Space Center.

Only Petchem and Dravo submitted rates in response to NASA's September 9 request. Dravo's offer incorporated by reference all other terms of prior tenders of rates and/or charges which it had filed with the Interstate Commerce Commission. NASA accepted the rate tender submitted by Dravo since it determined that Dravo had proposed the lowest overall price.

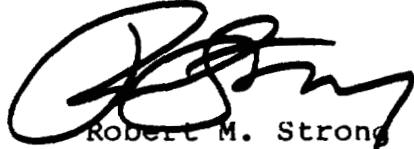
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NASA advises that it requested these rate tenders for the marine transportation services under authority provided in the applicable provisions of the Transportation Act of 1940. See 49 U.S.C. § 10721 (1982). NASA states that its request for rate quotations for the marine transportation services will be followed by issuance of a government bill of lading (Standard Form 1103) which becomes the document upon which payment is based. Accordingly, NASA argues that this protest should be dismissed because the transportation services are to be obtained under a government bill of lading pursuant to the pertinent statutory authority set forth in the Transportation Act of 1940 rather than pursuant to the procurement statutes and regulations which are subject to our bid protest authority.

A government bill of lading is the basic procurement document used by the government for acquiring freight transportation services from common carriers under section 321 of the Transportation Act of 1940 which authorizes the procurement of transportation services, at published rates, from any common carrier lawfully operating in the territory where such services are to be performed. 49 U.S.C. § 10721 (1982); see also Department of Agriculture--Request for Advance Decision, 62 Comp. Gen. 203 (1983), 83-1 C.P.D. ¶ 201.

Transportation obtained through the use of a government bill of lading is not subject to the procurement laws. Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 47.000(a)(2) and 47.200(b)(2) (1984); see also T.V. Travel, Inc.; et al., 65 Comp. Gen. _____ (1985) 85-2 C.P.D. ¶ 640 at 5,6. Furthermore, the rate tenders were obtained pursuant to the Transportation Act of 1940 and, therefore, the agency has not used the government's procurement procedures to obtain these transportation services. NASA has not used a solicitation which contains the ordinary clauses contained in procurement solicitations and we are advised by the agency that payment will be based upon a government bill of lading rather than the contractual documents ordinarily used for government procurement contracts. Accordingly, we conclude that this matter falls outside the government's procurement system and thus will not be considered by our Office under our Bid Protest Regulations, 4 C.F.R. part 21 (1985), which deal with the filing of protests of alleged violations of procurement statutes and regulations. 31 U.S.C.A. § 3552 (1985).

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong
Deputy Associate General Counsel